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November 21, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Second Administrative Review of the Antidumping Order on Non-
Malleable Cast Iron Pipe Fittings from the People's Republic of
China

SUMMARY

We have analyzed the comments of the interested parties in the antidumping duty administrative review on non-malleable cast iron pipe fittings ("NMP fittings") from the People's Republic of China ("PRC"). As a result of our analysis of these comments, we have made changes in the margin calculations as discussed in the "Margin Calculations" section of this memorandum. We recommend that you approve the positions we have developed in the "Discussion of the Issues" section of this memorandum. Both the Petitioners in this review, Anvil International Inc. & Ward Manufacturing ("Anvil" or "Petitioners"), and Myland Industrial Ltd. & Myland Buxin Foundry Ltd. (collectively, "Myland" or "Respondent") submitted comments on the Department's preliminary results of review. Below is the complete list of the issues that they raised:

- Comment 1: Adverse Facts Available for Missing Factors of Production
- Comment 2: Freight: Application of Sigma Rule
- Comment 3: Treatment of Sand and Riverbed Sand in Normal Value
- Comment 4: Treatment of Additional U.S. Inland Freight Revenues and Expenses
- Comment 5: Clerical Error in the Calculation of the Cost of Freight on Incoming Materials

BACKGROUND

On May 27, 2005, the Department of Commerce ("Department") published in the Federal Register a notice of the initiation of the antidumping duty administrative review of NMP fittings from the PRC for the period April 1, 2004, through March 31, 2005. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 30694. The respondents included Myland. On May 25, 2006, the Department

published its preliminary results of review. See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review 71 FR 30116 (May 25, 2006) (“Preliminary Results”). Anvil submitted a case brief on June 23, 2006, and Myland submitted a case brief on June 27, 2006. Anvil submitted a rebuttal brief on June 30, 2006, and Myland submitted a rebuttal brief on July 3, 2006. No other interested party submitted a case brief or rebuttal brief.

On September 12, 2006, the Department published a notice extending the time limit for the final results of the administrative review from September 22, 2006, to October 23, 2006. See Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 71 FR 53661 (September 12, 2006). On October 30, 2006, the Department published a notice extending the time limit for the final results of the administrative review from October 23, 2006, to November 10, 2006. See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review, 71 FR 63285 (October 30, 2006). On November 16, 2006, the Department published a notice extending the time limit for the final results of the administrative review from November 10, 2006, to November 21, 2006. See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review for the Period April 1, 2004 through March 31, 2005, 71 FR 66749 (November 16, 2006).

DISCUSSION OF THE ISSUES

Comment 1: Adverse Facts Available for Missing Factors of Production

The Petitioners argue that the Department should apply facts available because Myland did not report the actual inputs to production and Myland's method for reporting inputs is flawed.

Anvil states that Myland did not accurately report all of the quantities of raw materials employed in the production of NMP fittings. Anvil argues that the material inputs that Myland purchased prior to the period of review (“POR”), and inputs in inventory at the beginning of the POR, are not included in the purchase quantities reported. Also, citing Myland's June 27, 2006 Section D response at page D-19, Anvil states that Myland did not report any quantities of by-products used to produce NMP fittings. Anvil compares this case to Malleable Final, in which the Department determined that the Respondents failed to report the cast iron scrap recovered from the production process and consequently applied facts available. See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China, 68 FR 61395 (October 28, 2003) (“Malleable Final”).

Thus, Anvil concludes that Myland's material purchase quantities do not accurately represent the material quantities put into production. Citing Tianjin Mach. Imp. & Exp. Corp. v. United States, 353 F. Supp. 2d 1294, 1299 (CIT 2004) (“Tianjin Machinery”), Anvil states that Myland bears

the burden of demonstrating the accuracy of data it submitted. Further, citing Shandong Huarong Gen. Group Corp. v. United States, Slip Op. 2003-135 at 53, (CIT 2003) (“Shandong Huarong”), Anvil notes that Myland requested the present administrative review, and thus should have anticipated that it would be required to provide records that identify the quantities of the factors used in production. Anvil concludes, therefore, that Myland’s reporting of material purchase quantities rather than actual consumption quantities and failure to report any by-products used in production warrants the application of facts available for the calculation of normal value.

Further, Anvil argues that Myland’s reporting methodology is proven erroneous because the total input quantities reported for metallic materials are less than the output quantities of the finished NMP fittings. Anvil states that Myland’s reported purchase quantities of gray iron material inputs are less than the quantity of finished gray iron products, and the reported purchase quantities of all its major material inputs are less than the quantity of finished gray and ductile iron product.

Citing Malleable Final, Anvil argues that it is impossible to produce finished product in quantities greater than the quantity of inputs. For these reasons, Anvil argues that for the final results the Department should apply total adverse facts available (“AFA”) to determine Myland’s final margin.

Myland claims that Anvil’s objection to the use of purchase data to report factors of production (“FOPs”) is flawed because it only points to one area in which the data is deficient; namely, the anomaly that Myland had less inputs to production than finished product. Myland argues that its purchase quantities reasonably reflect the quantities consumed in production because it does not maintain significant inventories of any raw material input and those inventories do not significantly fluctuate. Myland asserts that in the absence of significant or fluctuating inventories, purchases equal consumption and thus, its own production records reasonably reflect the quantity of inputs consumed.

Citing Malleable Final and accompanying Issues and Decision Memorandum at Comment 1, Myland counters that the aforementioned anomaly (of the total volume of metallic input materials being less than the total volume of goods produced) has been identified before, and appears to be relatively common in industries in which production records are generated by hand. Myland acknowledges, however, that in this instance, Anvil is correct in that some input material was not accounted for. Myland stated that it inadvertently did not report a small amount of steel scrap purchases, and claims that they would account for the anomaly identified by Anvil.

Myland argues that the Department should reject Anvil’s proposition to apply AFA to the calculation of normal value. Myland contends that the subtext of Anvil’s allegations is that the data presented to the Department is legally deficient. Citing sections 782(d) and (e) of the Tariff Act of 1930, as amended (“the Act”), Myland argues that the Department is obligated to pursue additional data or to adjust and correct previously submitted data before the application of AFA, and to do otherwise is to ignore legal standards.

Myland proposes two solutions to correct for the deficient data. Myland contends that the data already on the record is complete enough so that the Department can make appropriate adjustments to eliminate the discrepancy identified by the Petitioners. Citing section 782(e) of the Act, Myland states that if the data already submitted is timely, verifiable, substantially complete, usable, and generally within requirements, the Department must use the available data to remedy the deficiency. Myland asserts that the Department has available to it the quantities of material inputs, the quantity of production and the amount of the discrepancy, and thus, has “a reliable basis for reaching the applicable determination,” under section 782(e)(3) of the Act.

To remedy this discrepancy, Myland suggests that the Department increase its reported consumption quantities of all metallic inputs to gray iron products by the percentage difference between the reported inputs and the quantity required for production in the margin program in order to offset the discrepancy with regard to finished gray iron products.

Alternatively, if the Department does not correct the anomaly itself, Myland suggests that in accordance with section 782(d) of the Act, the Department issue a post-preliminary supplemental questionnaire and request the data that would correct the anomaly. Myland notes that this procedure would arrive at the same end described above.

Myland argues that, from its calculations, and depending on how the Department may correct the anomaly, the dumping margin will not be materially altered. Thus, Myland concludes that it would be an error of law for the Department to apply the PRC-wide rate in any way, when the application of section 782(e) of the Act permits resolution of the discrepancy.

Department’s Position: We agree with Anvil that and Myland that Myland’s failure to report inputs in the quantity necessary to produce its merchandise necessitates the application of facts available. Section 776(a)(1) of the Act provides that the Department shall apply “facts otherwise available” if necessary information is not on the record. Section 776(a)(2) of the Act provides that the Department shall apply “facts otherwise available” if an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782, or (C) significantly impedes a proceeding.

Myland itself has stated that it has omitted reporting inputs to production, and has recommended that the Department use facts available to calculate a margin. See Myland Rebuttal Brief at 3 and 6-10. Specifically, in this review, Myland reported a quantity for raw material inputs for gray product in a quantity less than the quantity of finished gray product. See January 9, 2006 Electronic Exhibit Submission: MYLAND CALCULATION SPREADSHEETS TO DOC 01-09-06.xls, “Master Allocation.” Further, Myland’s reported raw material inputs for gray product were substantially less in quantity than the gross amount reported by Myland as

necessary to produce the merchandise. See Myland Second Deficiency Response at Exhibit S2-4; see also Myland Rebuttal Brief at Exhibit 1.

Furthermore, Myland's reported quantity of raw materials consumed for all production was less than the gross quantity reported by Myland as necessary for all production, i.e., of both gray and ductile product. See id. We note that it is a physical impossibility to produce a total quantity of finished product that is larger than the total quantity of inputs to the production of that product. See Malleable Final and accompanying Issues and Decision Memorandum at Comment 1. Additionally, the disparity between Myland's reported raw material inputs and Myland's allocated consumption amounts shows that Myland's allocation methodology must be flawed, or that Myland has not reported all raw material inputs.

Accordingly, the Department finds that necessary information, i.e., accurate factors of production utilized in producing the subject merchandise, is not on the record. Moreover, Myland failed to report raw material inputs for the production of its subject merchandise, and therefore has withheld information that was requested by the Department. Further, by not informing the Department of this until the briefing period for the final results, Myland has failed to provide information within the deadlines established by the Department in this administrative review, and significantly impeded the Department's ability to calculate an accurate margin for Myland using Myland's own data.

Section 782(c)(1) of the Act provides that, if an interested party promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall take into consideration the ability of the party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. Companion section 782(c)(2) of the Act similarly provides that the Department shall consider the ability of the party submitting the information and shall provide such interested party assistance that is practicable.

In Myland's June 27, 2006 Section D Response, it promptly notified the Department of its inability to submit the FOP information in the requested form and manner. The Department considered Myland's ability to submit the information and allowed Myland to propose an alternate methodology that would not impose an unreasonable burden on Myland, pursuant to section 782(c)(1) of the Act. However, Myland bore the responsibility to report complete and accurate information pursuant to this alternate methodology.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable

time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

In accordance with section 782(d), the Department issued a deficiency questionnaire on December 5, 2006, with ten questions specifically inquiring into Myland's FOP reporting. When Myland responded to this questionnaire on January 9, 2006, it presented a completely new methodology for reporting FOPs. The Department then had to analyze this new methodology and again issued deficiency questionnaires specifically addressing our concerns and questions regarding the FOP methodology on March 20, 2006 (ten questions), and April 12, 2006 (two questions). These inquiries provided Myland ample opportunity to provide accurate and complete FOP data.

Additionally, where the request for information was clear and is one of the central issues in an antidumping case, the Court of International Trade ("CIT") has found that the respondent has "a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce." Tung Mung Dev. Co. v. United States, 25 CIT 752, 758 (2001) ("Tung Mung"); see also Reiner Brach GmbH & Co. KG v. United States, 206 F. Supp. 2d 1323, 1332-33, (2002) ("Reiner Brach") (stating that, where the initial questionnaire was clear as to the information requested, where the Department questioned the respondent regarding the information, and where the Department was unaware of the deficiency, the Department is in compliance with section 782(d), and it is the respondent's obligation to create an accurate record and provide Commerce with the information requested). Further, the CIT has stated that the terms of sections 782(d) and (e) do not give rise to an obligation for the Department to permit a remedial response from the respondent where the respondent has not met all of the criteria of 782(e). See Tung Mung, 25 CIT at 789 (stating that the remedial provisions of 782(d) are not triggered unless the respondent meets all of the five enumerated criteria of 782(e)).

This is not a case where the request for information was not clear and the respondent can claim that it was unaware of its obligation to submit the data and thus required further notification by the Department. Record evidence clearly shows that Myland was aware of its obligation to report all raw material inputs. The Original Questionnaire sent to Myland requests this information at several places:

- Section D, Part I. A. Factors of Production: "Unless otherwise instructed by the Department, you should report factors information for all merchandise that meets the description of the scope listed in Appendix III, regardless of market destination. The reported amounts should reflect the factors of production used to produce one unit of the merchandise under consideration."

- Section D, Part I B. Reporting Period for Factors of Production: “Normally, you should calculate the per-unit factor amounts based on the actual inputs used by your company during the POR ...”
- Glossary of Terms: “Factors of Production”: For nonmarket economy countries, the usual bases for calculating normal value are not appropriate. Instead, the Department constructs a normal value using the nonmarket economy producer’s factors of production. The factors of production include ... (2) the quantities of raw materials employed ...”
- Appendix V Reconciliations, Factors of Production: Together with your factors of production response, provide the following worksheets that illustrate how the costs reported on the audited financial statements (or, if your company does not have audited financial statements, on the tax filing) reconcile to the general ledger or trial balance and to the cost accounting system (i.e., the source used to derive the reported input quantities, e.g., materials sub-ledgers, production records, and inventory records).
- Appendix VI, Factors of Production Spreadsheets: requests the “Total quantity of the FOP, from all sources, consumed in production/packing of the merchandise.”

It is also clear on the record from Myland’s responses that it was aware of the requirement to report all raw material inputs:

- Section D: Raw Material Amounts: Field Number 2.1: “{w}e have reported ductile iron factors of production by first dividing the total kilos of pig iron purchased during the POR,” Field Number 2.2: “{w}e have reported gray iron factors of production by first dividing the total kilos of pig iron purchased during the POR,” Field Number 2.3: “{w}e have reported scrap steel factors of production by first dividing the total kilos of pig iron purchased during the POR,” and “{w}e calculated factors of production using the exact same methodology for {foundry coke, limestone, ferro silicon, ferro manganese, nodulizer, sand, and wood}.
- First Deficiency Questionnaire Response at 26-27: “we calculated the per unit factors of production for the inputs to the casting stage of production according to the following formula:” ... “((C/D)*E)/F” ... “E = Total POR quantity of input to production.”
- First Deficiency Questionnaire Response at 23: In response to the Department’s request to identify the raw materials that were placed into production: “We believe that our material purchases accurately reflect the quantities of inputs consumed as we do not maintain significant inventories of any input to production.”

Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority” if the information (1) is submitted by the deadline established for its submission, (2) can be verified, (3) is not so incomplete that it cannot be used, (4) the interested party demonstrated that it acted to the best of its ability in providing the information, and (5) the information can be used without undue difficulties. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In the present case, complete and accurate information concerning the raw material purchases of a significant input was not submitted by the deadline established for its submission. See section 782(e)(1) of the Act. Myland did not submit the information at all, and only informed the Department that it had additional inputs in the final briefing period, over a month after the publication of the preliminary results. The Department afforded Myland numerous opportunities to timely provide complete and accurate information for the calculation of its antidumping duty margin. The Department must set a date certain to close the administrative record in order to be able to meet its obligations for completing any segment of a proceeding. Such deadlines are established to facilitate the Department’s ability to administer the antidumping law. See Reiner Brach, 206 F. Supp. 2d at 1334.

Further, Myland’s reported information cannot serve as a reliable basis for reaching the applicable determination. See section 782(e)(3) of the Act. The simple fact that Myland has additional unreported inputs means that the cost reconciliation submitted by Myland is inaccurate and unreliable. The cost reconciliation purported to reconcile all of Myland’s raw material inputs to its financial statements and was the basis for establishing the reliability of the total amount of reported inputs.

Furthermore, as explained below, the Department finds that Myland did not act to the best of its ability in providing the information. See section 782(e)(4) of the Act. In fact, Myland’s rebuttal brief essentially states that it had the information all along, but it merely failed to supply it to the Department when it would have been of use in calculating the margin. See Myland Rebuttal Brief at 3; see also Shandong Huarong (stating that the fact that the respondent had certain information and eventually produced the information afterwards showed failure to act to the best of its ability in the review); see also Nippon Steel Corp. v. United States, 337 F.3d 1373, 1384 (Fed Cir. 2003) (“Nippon Steel”).

Use of Adverse Inferences

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 870 (1994). Furthermore, “affirmative evidence of bad faith, or willfulness, on the part of a respondent is not required before the Department may make an adverse inference.” See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997).

The U.S. Court of Appeals for the Federal Circuit has held that the “best of its ability” standard “requires the respondent to do the maximum it is able to do.” See Nippon, 337 F.3d at 1382. The Court further elaborated:

While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.

Id.

The Department finds that Myland did not act to the best of its ability to furnish the requested information in this review. First, the Department notes that Myland requested this review and could be expected to have kept adequate records. See Shandong Huarong at 53 (stating that there can “be no doubt that a reasonable and responsible producer, seeking an administrative review, will have accurate records of its factors of production”) see also Tianjin Machinery, 353 F. Supp. at 1299. Second, Myland has stated that it was in possession of the required information but failed to submit it to the Department. See Myland Rebuttal Brief at 3; see also Nippon Steel, 337 F.3d at 1382 (“the ‘best of ability’ standard does not condone inattentiveness, carelessness, or inadequate record keeping”); Shandong Huarong at 36 (stating that the fact that the respondent had certain information and eventually found the information afterwards showed failure to act to the best of its ability initially). The record shows that, at best, Myland did not

thoroughly investigate its own records to ensure that it was providing the Department with complete and accurate data.

Application of Total Adverse Facts Available

The application of adverse facts available (“AFA”) is necessary in this case because Myland did not report all of the inputs into its subject merchandise. The Act provides that the Department shall determine normal value of subject merchandise based on the factors of production utilized in producing the merchandise. The record in this case shows that the raw material inputs have not been reported accurately. First, the total of raw material inputs is less than the finished quantity for certain products, which is a physical impossibility. Second, respondent has stated that it has omitted raw material inputs from the record. Third, the fact that Myland’s methodology of reporting raw material inputs projects a quantity of raw material inputs that does not reflect Myland’s purchases brings into question Myland’s reporting methodology, as its proposed alternate reporting methodology was specifically to use purchased materials as a reflection of inputs consumed.

Additionally, and importantly, record evidence shows that Myland’s cost reconciliation is neither complete nor accurate. The Department requires each respondent in an antidumping duty administrative review to provide a cost reconciliation, reconciling the respondent’s total inputs to its financial statements.¹ Myland provided its cost reconciliation to the Department in its Section D response on June 23, 2005, in which it reconciled all of its “inputs of production for the POR and their corresponding values to its audited annual income statements for the POR.” See Section D Response at D-24. However, Myland later states in its rebuttal brief to the Department that

{i}n this case, Petitioners allege that the metallic inputs purchases equal {a fraction}, by weight, of the finished gray articles, meaning that some input material has not been accounted for. Petitioners are correct. As soon as this deficiency was brought to our attention, we contacted the producer and sought to determine the source of the anomaly. We learned that in submitting the input information, the producer omitted a small number of steel scrap purchases in an amount that would account for the full deficiency identified by the Petitioners.

¹The Department’s standard questionnaire states, in part: “Together with your factors of production response, provide the following worksheets that illustrate how the costs reported on the audited financial statements (or, if your company does not have audited financial statements, on the tax filing) reconcile to the general ledger or trial balance and to the cost accounting system (i.e., the source used to derive the reported input quantities, e.g., materials sub-ledgers, production records, and inventory records).”

See Myland's Rebuttal comments at 3-4.

Because Myland submitted to the Department a cost reconciliation that reconciled its purchases of inputs to its audited financial statements, and now states that this significant quantity of inputs was not included in its reconciliation, the Department finds that Myland's submitted reconciliation cannot be credible.

The Department has applied total AFA in other cases because the respondents failed to provide adequate cost reconciliations. See Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India, 71 FR 45012 (August 8, 2006) and accompanying Issues and Decision Memorandum at Comment 14; see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350 (December 8, 2003), and accompanying Issues and Decision Memorandum at Comment 6. In this case, it is particularly important that Myland's cost reconciliation be accurate because Myland has no cost accounting system, kept no cost control reports, and has no records that would allow it to identify the raw material inputs used in production. Therefore, the sole basis in this review for identifying the accuracy of the reported inputs used in production is Myland's cost reconciliation of its purchases to its audited financial statements. Because Myland's cost reconciliation is based on an under-reported level of raw material inputs, the Department finds there is no reliable information on the record from which to calculate an antidumping duty margin for Myland.

Based on the failures to provide the requested information enumerated above and Myland's failure to report complete and accurate data, we have determined that Myland failed to cooperate to the best of its ability in this administrative review. Further, because the information provided by Myland is incomplete, unreliable and contradictory, we have determined that there is no information on the record that can be used to calculate an antidumping duty margin for Myland. Therefore, for the final results, the Department has determined that the application of total AFA is warranted for Myland pursuant to sections 776(a) and (b) of the Act.

For a discussion of this issue including business proprietary information, see Application of Adverse Facts Available for Myland Industrial Ltd. & Myland Buxin Foundry Ltd. in the Final Results of Antidumping Duty Administrative Review of Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China Memorandum, from Eugene Degnan, Analyst, through Wendy J. Frankel, Director, dated November 10, 2006.

Comment 2: Application of Sigma Rule

Anvil argues that the Department should change the way it calculated distance for the final results. Anvil points out that in the Preliminary Results, the Department calculated the freight costs based on the shorter of the reported distance from the domestic supplier to the factory or the distance from the port to the factory in accordance with the decision of Sigma Corporation v. United States, 117 F. 3d 1401, 1407-8 (Fed. Cir 1997) (“Sigma”). Anvil asserts that for suppliers that did not produce the actual input (*i.e.*, distributors), the Department’s adjustment for NME inland freight is not in accord with Sigma because the Department failed to capture the cost of inland freight from the actual producer of the input to the distributor and thus is understating inland freight. Also, Anvil argues that where the NME producer of the input is unknown, the Department should apply its longstanding practice prior to Sigma of calculating the inland freight based on the distance between the Respondent’s factory and the port for the final results.

Myland argues that the Department properly calculated its freight costs based on the shorter of the reported distance from domestic supplier to the factory or distance from the port to the factory in accordance with the decision in Sigma. Myland maintains that no logical reading of the Preliminary Results statement on how the Department applied the Sigma rule would lead to the conclusion that the Department had disregarded the costs from the producer to the distributor. Therefore, for the final results, Myland argues that the Department should continue to apply inland freight distances based on the shorter of the distances from the factory to the actual supplier of the input or from the factory to the nearest port in accordance with Sigma.

Department’s Position: Because the Department has determined to apply total AFA to determine Myland’s dumping margin in this review, we do not reach a position on this issue.

Comment 3: Treatment of Sand and Riverbed Sand in Normal Value

Myland claims that the Department erred in the preliminary results by treating sand for molds and riverbed sand (collectively, “sands”) for cores as material inputs for purposes of calculating normal value. Myland claims that sands comprise (partially) the molds used to produce subject merchandise and should thus be treated as overhead items. Additionally, Myland argues that when a material is used infrequently, and in small amounts, or is indirectly related to production, the Department previously valued this “process material” as an overhead expense, but when the material is critical to production and not capable of being substituted or replaced, the Department considered it a production input.² Myland states that in the instant review, sands are used as

² Myland cites Silicomanganese From the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review, 65 FR 31514 (May 18, 2000); Notice of Final Determination of Sales at Less than Fair Value: Manganese from the People’s Republic of China, 60 FR 56045 (November 6, 1995); Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the

supporting elements in the cores and molds and are not materials used in the production of NMP fittings themselves. Myland argues that sands in the instant review are used identically as the sands used in production in the Malleable Final. Thus, consistent with the Malleable Final, Myland concludes that it is more appropriate for the Department to treat sands as an overhead expense rather than a direct input to production.

Anvil argues that in the instant review, sands are used in the molds used to cast the fittings and should be considered as more than an incidental component of production. Additionally, Anvil contends that the assumptions in Malleable Final and Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings From the People's Republic of China, 68 FR 7765 (Feb. 18, 2003) (i.e., the treatment of sand as an overhead expense) do not dictate the results of the instant review because in Certain Malleable Iron Pipe Fittings From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review, 70 FR 76234 (December 23, 2005) ("Malleable AR1 Prelim"), the Department treated sand as a direct material input rather than a component of overhead. Citing Malleable AR1 Prelim, Anvil argues that the Department treated sand as a direct material despite the fact that surrogate Indian producers included process materials as overhead expenses in their financial statements. Finally, Anvil cites Malleable AR1 Prelim as an instance in which the Department moved the line item of "job and process charges" from the overhead calculation to the calculation of materials, labor and energy. Therefore, for the final results, Anvil argues that the Department should continue to value sands as direct material inputs.

Department's Position: Because the Department has determined to apply total AFA to determine Myland's dumping margin in this review, we do not reach a position on this issue.

Comment 4: Treatment of Additional U.S. Inland Freight Revenues and Expenses

Myland reported having received revenues and incurred expenses for additional U.S. inland freight activities arranged after the conclusion of the sale to an unaffiliated customer. For the preliminary results, the Department determined to capture the selling price as the price to the C.I.F. location, as we considered this to be the conclusion of the sale to the unaffiliated customer. The Department considered any extra freight costs in the United States to be a separate transaction and did not make further adjustments to the U.S. sales price for these separately transacted U.S. inland freight services. See Preliminary Results at 30119.

Myland argues that the Department should correct its preliminary ruling by including an amount for freight charges to the customer's ultimate destination, and by deducting an amount for the actual freight expenses to the customer's ultimate destination, in the calculation of movement expenses that are deducted from the U.S. price. Myland argues that the Department's analysis

People's Republic of China, 61 FR 19026 (April 30, 1996).

would be correct if the movement from the C.I.F. location to the customer's ultimate location were pursuant to resale by Myland's customer. However, citing Myland Industrial Co., Ltd. ("Myland") Program Analysis for the Preliminary Results of Review, dated May 1, 2006 ("Prelim Analysis Memo") at page 6, Myland notes that only one sales transaction was made (per sale) between Myland and the unaffiliated customer. Therefore, Myland argues that for the final results, the Department should add an amount for freight charges to the customer's ultimate destination and deduct an amount for the actual freight expenses to the customer's ultimate destination in the calculation of movement expenses (that are deducted from the U.S. price).

Anvil disagrees with Myland's assertion that the Department should have adjusted the U.S. price for the inland freight services arranged by the seller's representative ("services") and agrees with the Department decision in the Preliminary Results. Anvil contends that the services involved an agreement between the seller's representative and the first unaffiliated customer for the additional inland freight transport of the subject merchandise, rather than an agreement between Myland and the unaffiliated customer for the sale of subject merchandise. Additionally, citing Myland's June 27, 2005, Section C questionnaire response at page C-1, Anvil argues that additional freight services represent delivery to customers of the first unaffiliated customer.

Department's Position: Because the Department has determined to apply total AFA to determine Myland's dumping margin in this review, we do not reach a position on this issue.

Comment 5: Clerical Error in the Calculation of the Cost of Freight on Incoming Materials

Myland argues that the Department made a clerical error in the calculation of input materials because it miscalculated the cost of freight on incoming materials. Myland contends the Department should have added the freight costs only after it had first calculated the value of the input material in the SAS program. Myland states that the freight costs were calculated using the input quantity in the SAS program which preceded the total input cost calculation and included the input quantity, surrogate value for freight and distance to the supplier. Myland states that the total input calculation should have first arrived at the value of the input material and then to that amount add the freight amount.

Department Position: Because the Department has determined to apply total AFA to determine Myland's dumping margin in this review, we do not reach a position on this issue.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margin for Myland in the Federal Register.

Agree_____

Disagree_____

David M. Spooner
Assistant Secretary
for Import Administration

(Date)